



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 13, 1996

Ms. Tamara Armstrong
Assistant County Attorney
P.O. Box 1748
Austin, Texas 78767

OR96-2076

Dear Ms. Armstrong:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We assigned your request ID# 35918.

Travis County (the "county") received a request for "all the material in the district attorney's files relating to Darryl Thomas Kemp under the Texas Open Records Act." You have asserted that the information at issue is excepted from disclosure pursuant to sections 552.101 and 552.111 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert that the request for records concerning Mr. Kemp is a request for his criminal history. Criminal history information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). See also Gov't Code 411.084 (prohibiting release of criminal history information obtained from Department of Public Safety). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public.

The privacy interest in criminal history record information has been recognized by federal regulations which limit access to criminal history record information which states obtain from the federal government or other states. See 28 C.F.R. § 20; *see also United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (finding criminal history information protected from disclosure under Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. § 552a). Recognition of this privacy interest has been echoed in open records decisions issued by this office. See Open Records Decision Nos. 616 (1993), 565 (1990), 216 (1978), 183 (1978), 144 (1976), 127 (1976).¹

In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (hereinafter "*Houston Chronicle*"), the court addressed the availability under the Open Records Act of certain broad categories of documents in the possession of a city police department, including offense "Personal History and Arrest Records." The court held that "Personal History and Arrest Records" were excepted from required public disclosure. These records primarily contained criminal histories, such as information regarding previous arrests and other data relating to suspected crimes, including the offenses, times of arrest, booking numbers, locations, and arresting officers. *Houston Chronicle Publishing Co.*, 531 S.W.2d at 179. The court held that release of these documents would constitute an unwarranted invasion of an arrestee's privacy interests. *Id.* at 188.

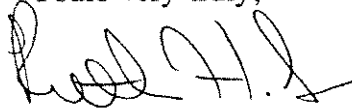
The information requested here is of the same type made confidential by *Houston Chronicle Publishing Co.* As the requestors seek all information that the district attorney has that relates to Mr. Kemp, release of this information also provides Mr. Kemp's criminal history information. As noted above, federal and state case law regarding an individual's common-law right to privacy expressly prohibits the release of such information. Accordingly, we conclude that the county must withhold the requested

¹ The Code of Federal Regulations defines "criminal history information" as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release." 28 C.F.R. § 20.3(b). The information at issue here fits this description.

information from required public disclosure under section 552.101 of the Government Code.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Enclosures: Submitted documents

Ref.: ID# 35918

cc: Mareva Brown
The Sacramento Bee
P.O. Box 15779
Sacramento, California 95852
(w/o enclosures)

²As the information at issue must be withheld from disclosure under section 552.101, we need not address your section 552.111 argument against disclosure.